

BEFORE THE TENNESSEE REGULATORY AUTHORITY
Nashville, Tennessee

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In Re: Implementation of Federal)
Communications Commission's)
Triennial Order (Phase II - Local Circuit)
Switching for Mass Market Customers))

T.R.A. DOCKET ROOM

Docket No.: 03-00491

AT&T'S OBJECTIONS TO BELL SOUTH'S
FIRST SET OF INTERROGATORIES (Nos. 1-84)

AT&T Communications of the South Central States, LLC ("AT&T"), pursuant to the Order on October 21, 2003 Status Conference, issued by Director Jones of the Tennessee Regulatory Authority ("TRA") (hereinafter "*Procedural Order*"), Rules 26.02 and 33.01 of the Tennessee Rules of Civil Procedure, objects generally and specifically to BellSouth Telecommunications, Inc.'s (hereinafter "BellSouth") First Set of Interrogatories to AT&T Communications of the South Central States, LLC, served on October 24, 2003, as described below.

OVERVIEW

AT&T files these objections for purposes of complying with the *Procedural Order*. These objections are preliminary in nature. Should additional grounds for objection be discovered as AT&T prepares its responses to any discovery, or at any time prior to hearing, AT&T reserves the right to supplement, revise, and/or modify these objections.

GENERAL OBJECTIONS

AT&T makes the following general objections to the Interrogatories which will be incorporated by reference into AT&T's specific responses when AT&T responds to the Interrogatories.

1. Definitions

A. AT&T objects to the lengthy "Definitions" section of BellSouth's First Set of Interrogatories to AT&T to the extent that such terms are overly broad, unduly burdensome, irrelevant, oppressive and not reasonably calculated to lead to the discovery of admissible evidence pursuant to the *Procedural Order*, Rule 1220-1-2.11 of the Rules of Practice and Procedure of the TRA and Rule 26.02 of the Tennessee Rules of Civil Procedure. Furthermore, AT&T objects to the "Definitions" section to the extent that it utilizes terms that are subject to multiple interpretations, but are not properly defined or explained for purposes of these Interrogatories.

B. AT&T objects to the "Definitions" section of BellSouth's First Set of Interrogatories to AT&T to the extent that the definitions operate to include the discovery of information protected by attorney/client privilege, the work product doctrine, or any other applicable privilege.

C. AT&T objects to the "Definitions" section of BellSouth's First Set of Interrogatories to AT&T to the extent that the definitions operate to include the discovery of information and/or materials containing the mental impressions, conclusions, opinions or legal theories of any attorney or other representative of AT&T concerning the subject of the proceeding and prepared and developed in anticipation of litigation pursuant to Rule 26.02(3) of the Tennessee Rules of Civil Procedure without the requisite showing from BellSouth that it has substantial need of the requested information and materials in the preparation of the case and is unable without undue hardship to obtain the substantial equivalent of the materials by other means.

D. AT&T objects to the "Definitions" section of BellSouth's First Set of Interrogatories to AT&T to the extent that the definitions operate to impose discovery obligations on AT&T inconsistent with, or beyond the scope of, what is permitted under the *Procedural Order* and the applicable Tennessee Rules of Civil Procedure.

E. AT&T objects to the "Definitions" section of BellSouth's First Set of Interrogatories to AT&T to the extent that the definitions operate to seek discovery of matters other than those subject to the jurisdiction of the TRA pursuant to the FCC's Triennial Review Order and applicable Tennessee law.

F. AT&T objects to the "Definitions" section of BellSouth's First Set of Interrogatories to AT&T to the extent that the interrogatories purport to seek disclosure of information that is proprietary confidential information or a "trade secret" without the issuance of an appropriate Protective Order pursuant to Rule 26.03 of the Tennessee Rules of Civil Procedure and Rule 1220-1-2.11 of the Rules of the Practice and Procedure of the TRA.

G. AT&T objects to the definitions of “you” and “your,” “AT&T,” and “person” to the extent that the definitions include natural persons or entities which are not parties to this proceeding, not subject to the jurisdiction of the TRA, and not subject to the applicable discovery rules. Subject to the foregoing, and without waiving any objection, general or specific, unless otherwise ordered, responses will be provided on behalf of AT&T Communications of the South Central States, LLC, which is a certificated carrier authorized to provide regulated communications services in Tennessee and which is a party to this proceeding.

2. Instructions

A. AT&T objects to the “General Instructions” section of BellSouth’s First Set of Interrogatories to AT&T to the extent that the “instructions” operate to impose discovery obligations on AT&T inconsistent with, or beyond the scope of, what is permitted under the *Procedural Order*, Rule 1220-1-2.11 of the Rules of Practice and Procedure of the TRA, and the applicable Tennessee Rules of Civil Procedure. Subject to the foregoing, and without waiving any objection, responses will be provided in accordance with the *Procedural Order*, Rule 1220-1-2.11 of the Rules of Practice and Procedure of the TRA, and the applicable Tennessee Rules of Civil Procedure.

B. AT&T objects to the “General Instructions” section of BellSouth’s First Set of Interrogatories to AT&T to the extent that the “instructions” operate to seek disclosure of the mental impressions, conclusions, opinions, or legal theories of any attorney or other representative of AT&T concerning the subject of litigation without the requisite showing under Rule 26.02(3) of the Tennessee Rules of Civil Procedure.

C. AT&T objects to the “General Instructions” section of BellSouth’s First Set of Interrogatories to AT&T to the extent that the “instructions” operate to seek disclosure of “all” information in AT&T’s “possession, custody or control” and to the extent that said “instruction” requires AT&T to provide information or materials beyond its present knowledge, recollection or possession. With respect thereto, AT&T has employees located in many different locations in Tennessee and other states. In the course of conducting business on a nationwide basis, AT&T creates numerous documents that are not subject to either the TRA or FCC record retention requirements. These documents are kept in numerous locations and frequently are moved from location to location as employees change jobs or as business objectives change. Therefore, it is impossible for AT&T to affirm that every responsive document in existence has been provided in response to all Interrogatories. Instead, where provided, AT&T’s responses will provide all information obtained by AT&T after a reasonable

and diligent search conducted in connection with those Interrogatories. Such search will include only a review of those files that are reasonably expected to contain the requested information. To the extent that the "instructions" require more, AT&T objects on the grounds that compliance would be unduly burdensome, expensive, oppressive, or excessively time consuming to provide such responsive information.

3. General Objections to Interrogatories

A. AT&T objects to BellSouth's First Set of Interrogatories to AT&T to the extent that the interrogatories are overly broad, unduly burdensome, irrelevant, oppressive and not reasonably calculated to lead to the discovery of admissible evidence pursuant to the *Procedural Order*, Rule 1220-1-2.11 of the Rules of Practice and Procedure of the TRA, and Rule 26.02 of the Tennessee Rules of Civil Procedure.

B. AT&T objects to BellSouth's First Set of Interrogatories to AT&T to the extent that the interrogatories purport to seek discovery of information protected by attorney/client privilege, the work product doctrine, or any other applicable privilege.

C. AT&T objects to BellSouth's First Set of Interrogatories to AT&T to the extent that the interrogatories purport to seek discovery of information and/or materials containing the mental impressions, conclusions, opinions or legal theories of any attorney or other representative of AT&T concerning the subject of the proceeding and prepared and developed in anticipation of litigation pursuant to Rule 26.02(3) of the Tennessee Rules of Civil Procedure without the requisite showing from BellSouth that it has substantial need of the requested information and materials in the preparation of the case and is unable without undue hardship to obtain the substantial equivalent of the materials by other means.

D. AT&T objects to BellSouth's First Set of Interrogatories to AT&T to the extent that the interrogatories purport to impose discovery obligations on AT&T inconsistent with, or beyond the scope of, what is permitted under the *Procedural Order*, Rule 1220-1-2.11 of the Rules of Practice and Procedure of the TRA, and the applicable Tennessee Rules of Civil Procedure.

E. AT&T objects to BellSouth's First Set of Interrogatories to AT&T to the extent that the interrogatories purport to seek discovery of matters other than those subject to the jurisdiction of the TRA pursuant to the FCC's Triennial Review Order and applicable Tennessee law.

F. AT&T objects to BellSouth's First Set of Interrogatories to AT&T

to the extent that the interrogatories purport to seek disclosure of information that is proprietary confidential information or a "trade secret" without the issuance of an appropriate Protective Order pursuant to Rule 26.03 of the Tennessee Rules of Civil Procedure, and Rule 1220-1-2.11 of the Rules of Practice and Procedure of the TRA.

G. AT&T objects to all interrogatories which require the disclosure of information which already is in the public domain or otherwise on record with the TRA or the Federal Communications Commission ("FCC").

H. AT&T objects to BellSouth's First Set of Interrogatories to AT&T to the extent that the interrogatories seek information and discovery of facts known and opinions held by experts acquired and/or developed in anticipation of litigation or for hearing and outside the scope of discoverable information pursuant to Rule 26.02(4) of the Tennessee Rules of Civil Procedure.

I. Pursuant to the *Procedural Order*, the Triennial Review Order, and Rule 26.03 of the Tennessee Rules of Civil Procedure, to the extent that BellSouth's interrogatories request specific financial, business or proprietary information regarding AT&T's economic business model, AT&T objects to providing or producing any such information on the grounds that those requests presume that the market entry analysis is contingent upon AT&T's economic business model instead of the hypothetical business model contemplated by the Triennial Review Order.

SPECIFIC OBJECTIONS TO INTERROGATORIES

REQUEST: BellSouth First Set of Interrogatories

DATED: October 24, 2003

Interrogatory 14: Do you offer to provide or do you provide switching capacity to another local exchange carrier for its use in providing qualifying service anywhere in the nine states of the BellSouth region? If the answer to this Interrogatory is in the affirmative, for each switch that you use or provide such switching capacity, please:

- (a) Provide the Common Language Location identifier ("CLLI") code of the switch;
- (b) Provide the street address, including the city and state in which the switch is located;

- (c) Identify the type of switch by manufacturer and model (e.g., Nortel DMS 100.);
- (d) State the total capacity of the switch by providing the maximum number of voice-grade equivalent lines the switch is capable of serving, based on the switch's existing configuration and component parts;
- (e) State the number of voice-grade equivalent lines the switch is currently serving, based on the switch's existing configuration and component parts; and
- (f) Identify all documents referring to or relating to the rates, terms and conditions of AT&T's provision of switching capability.

Objection: AT&T objects specifically with respect to subpart (f). AT&T objects on the basis that this Interrogatory is not reasonably calculated to lead to the discovery of admissible evidence. Documents referring to the terms of AT&T's provisioning of switching for Comcast are not relevant.

Interrogatory 15: Identify every business case in your possession, custody or control that evaluates, analyzes or otherwise refers or relates to the offering of a qualifying service using:

- (1) the Unbundled Network Element Platform (UNE-P), (2) self-provisioning switching, (3) switching obtained from a third party provider other than an ILEC, or (4) any combination of these items.

Objection: AT&T objects to this interrogatory to the extent that it is not reasonably calculated to lead to the discovery of admissible evidence.

Pursuant to the *Procedural Order*, the Triennial Review Order, and Rules 26.02 and 33.01 of the Tennessee Rules of Civil Procedure, and Rule 1220-1-2.11 of the Rules of Practice and Procedure of the TRA, to the extent that this interrogatory requests specific financial, business or proprietary

information regarding AT&T's economic business model, AT&T objects to providing or producing any such information on the grounds that those requests presume that the market entry analysis is contingent upon AT&T's economic business model instead of the hypothetical business model contemplated by the Triennial Review Order. The Triennial Review Order explicitly contemplates that in considering whether a competing carrier economically can compete in a given market without access to a particular unbundled network element, the TRA must consider the likely revenues and costs associated with the given market based on the *most efficient business model* for entry rather than to a *particular carrier's business model*. TRO at ¶326. In particular, the FCC stated:

In considering whether a competing carrier could economically serve the market without access to the incumbent's switch, the state commission must also consider the likely revenues and costs associated with local exchange mass market service . . . The analysis must be based on the *most efficient business model* for entry rather than to any *particular carrier's business model*.

Id. [emphasis added]. Additionally, with respect to economic entry, in ¶517, the FCC stated that ". . . [t]he analysis must be based on the most efficient business model for entry rather than to any particular carrier's business model." Furthermore, in Footnote 1579 of Paragraph 517, the FCC clarified that ". . . [s]tate commissions should not focus on whether competitors operate under a cost disadvantage. State commissions should determine if entry is economic by conducting a business case analysis for an *efficient entry*." [emphasis added].

In addition to these statements, the FCC also made numerous other references to the operations and business plans of an efficient competitor, specifically rejecting a review of a particular carrier's business plans or related financial information. See, ¶84,

Footnote 275 (“Once the UNE market is properly defined, impairment should be tested by asking whether a *reasonable efficient CLEC* retains the ability to compete even without access to the UNE.”) (citing BellSouth Reply, Attachment 2, Declaration of Howard A. Shelanski at ¶2 (emphasis added)). See also, TRO at ¶115; ¶469; ¶485, Footnote 1509; ¶517, Footnote 1579; ¶519, Footnote 1585; ¶520, Footnotes 1588 and 1589; ¶581, and Footnote 1788.¹

Accordingly, the FCC’s TRO specifically contemplates the consideration of financial and related information of an *efficient “model” competitor* and not that of AT&T or any other *particular competitor*. As a result, discovery of AT&T’s financial information or business plans will not lead to the discovery of admissible evidence in this proceeding.

Interrogatory 16: Identify any documents that you have provided to any of your employees or agents, or to any financial analyst, bank or other financial institution, shareholder or any other person that describes, presents, evaluates or otherwise discusses in whole or part, how you intend to offer or provide local exchange service, including but not limited to such things as the markets in which you either do participate or intend to participate, the costs of providing such service, the market share you anticipate obtaining in each market, the time horizon over which you anticipate obtaining such market share, and the average revenues you expect per customer.

Objection: AT&T incorporates its Objection to Interrogatory No. 15 as if fully set forth.

Interrogatory 17: If not identified in response to a prior Interrogatory, identify every document in your possession, custody, or control referring or relating to the financial viability of self-provisioning switching in your providing

¹ For the Authority’s convenience, please see Attachment 1 that sets forth the text of these relevant Paragraphs and Footnotes from the TRO. *Complete text of the Triennial Review Order is available @ www.fcc.gov.*

qualifying services to end user customers.

Objection AT&T incorporates by reference its objections to Interrogatory No. 15 as if fully set forth.

Interrogatory 26: For those end user customers to whom you provide qualifying service in the state of Tennessee, please state the average monthly revenues you receive from each end-user customer.

Objection: AT&T incorporates its Objection to Interrogatory No. 15, *supra* and reiterates that the FCC's *TRO* specifically contemplates the consideration of financial and related information of an *efficient "model" competitor* and not that of AT&T or any other *particular competitor*. As a result, discovery of AT&T financial information or business plans will not lead to the discovery of admissible evidence in this proceeding.

Interrogatory 29: For those end user customers to whom you only provide non-qualifying service in the State of Tennessee, please state the average monthly revenues you receive from each such customer.

Objection: AT&T incorporates its Objection to Interrogatory No. 15, *supra* and reiterates that the FCC's *TRO* specifically contemplates the consideration of financial and related information of an *efficient "model" competitor* and not that of AT&T or any other *particular competitor*. As a result, discovery of AT&T financial information or business plans will not lead to the discovery of admissible evidence in this proceeding.

Interrogatory 31: For those end user customers to whom you provide qualifying and non-qualifying service in the State of Tennessee, please state the average monthly revenues you receive from each such end user customer

Objection: AT&T incorporates its Objection to Interrogatory No.

15, *supra* and reiterates that the FCC's TRO specifically contemplates the consideration of financial and related information of an *efficient "model" competitor* and not that of AT&T or any other *particular competitor*. As a result, discovery of AT&T financial information or business plans will not lead to the discovery of admissible evidence in this proceeding.

Interrogatory 34: For each class or type of end user customer referenced in Interrogatory No. 33, please state the average acquisition cost for each such end user class or type. Please provide this information for each month from January 2000 to the present.

Objection: AT&T incorporates its Objection to Interrogatory No. 15, *supra* and reiterates that the FCC's TRO specifically contemplates the consideration of financial and related information of an *efficient "model" competitor* and not that of AT&T or any other *particular competitor*. As a result, discovery of AT&T financial information or business plans will not lead to the discovery of admissible evidence in this proceeding.

Furthermore, the TRO specifically mentions that one consideration of the economic impairment analysis is the potential cost of market entry to the hypothetical "efficient entrant," including the cost of customer acquisitions. See, TRO at ¶520. Accordingly, the "average acquisition cost" to AT&T specifically for a particular user class or type is not relevant or reasonably calculated to lead to the discovery of admissible evidence.

Interrogatory 35: For each class or type of end user customer referenced in Interrogatory No. 33, please state the typical churn rate for each such end user class or type. Please provide this information fore each month from January 2000 to the present.

Objection: AT&T incorporates its Objection to Interrogatory No. 15, *supra* and reiterates that the FCC's TRO specifically contemplates the consideration of

financial and related information of an *efficient "model" competitor* and not that of AT&T or any other *particular competitor*. Furthermore, it should be noted that the TRO specifically mentions that one consideration of the economic impairment analysis is the potential "impact of churn on the cost of customer acquisitions" for the hypothetical "efficient entrant". Accordingly, AT&T's "typical churn rate" for a particular user class or type is not relevant or reasonably calculated to lead to the discovery of admissible evidence. See, TRO at ¶520.

Interrogatory 38: Identify any documents in your possession, custody or control that evaluate or otherwise refer or relate to any projections that you have made regarding your cumulative market share growth in the local exchange market in Tennessee.

Objection: AT&T incorporates its Objection to Interrogatory No. 15, *supra*.

Interrogatory 39: Describe how the marketing organization that is responsible for marketing qualifying service in Tennessee is organized, including the organization's structure, size in terms of full-time or equivalent employees, including contract and temporary employees, and the physical work locations for such employees. In answering this Interrogatory, please state whether you utilize authorized sales representatives in your marketing effort in Tennessee, and, if so, describe with particularity the nature, extent, and rates, terms, and conditions of such use.

Objection: AT&T incorporates its Objection to Interrogatory No. 15, *supra*.

Interrogatory 43: What cost of capital do you use in evaluating whether to offer a qualifying service in a particular geographic market and how is that cost of capital determined?

Objection: AT&T incorporates its Objection to Interrogatory No 15, *supra* and notes that the FCC's TRO specifically contemplates the consideration of financial and related information of an *efficient "model" competitor* and not that of AT&T or any other *particular*

competitor.

Furthermore, it should be noted that the TRO mentions that one consideration of the economic impairment analysis is the cost of capital for the hypothetical "efficient entrant." Specifically, ¶520 of the TRO states that the state "must consider all factors affecting the costs faced by a competitor providing local exchange service to the mass market." See also, TRO at ¶520. Accordingly, AT&T's "cost of capital" used in evaluating whether to offer a qualifying service in a particular geographic market and the analysis in determining the cost of capital is not relevant or reasonably calculated to lead to the discovery of admissible evidence.

Interrogatory 44: With regard to the cost of capital you use in evaluating whether to provide a qualifying service in a particular geographic market, what are the individual components of that cost of capital, such as the debt-equity ratio, the cost of debt and the cost of equity?

Objection: AT&T incorporates its Objection to Interrogatory No. 15, *supra* and notes that the FCC's TRO specifically contemplates the consideration of financial and related information of an *efficient "model" competitor* and not that of AT&T or any other *particular competitor*.

Furthermore, it should be noted that the TRO mentions that one consideration of the economic impairment analysis is the cost of capital for the hypothetical "efficient entrant." Specifically, ¶520 of the TRO states that the state "must consider all factors affecting the costs faced by a competitor providing local exchange service to the mass market." See also, TRO at ¶520. Accordingly, AT&T's "cost of capital", or the components thereof, used in evaluating whether to offer a qualifying service in a particular geographic market and the analysis in determining the cost of capital is not relevant or reasonably calculated to lead to the discovery of admissible evidence.

Interrogatory 45: In determining whether to offer a qualifying service in

a particular geographic market, what time period do you typically use to evaluate that offer? That is, do you use one year, five years, ten years, or some other time horizon over which to evaluate the project?

Objection: AT&T incorporates its Objection to Interrogatory No. 15, *supra* and notes that the FCC's TRO specifically contemplates the consideration of financial and related information of an *efficient "model" competitor* and not that of AT&T or any other *particular competitor*.

Accordingly, AT&T's determination of whether to offer a "qualifying service in a particular geographic market" and the time periods involved in such evaluation are irrelevant and not reasonably calculated to lead to the discovery of admissible evidence.

Interrogatory 47: Based on the definition of sales expense in the foregoing Interrogatory, please state how you estimate sales expense when evaluating whether to offer a qualifying service in a particular geographic market?

Objection: AT&T incorporates its Objection to Interrogatory No. 15, *supra* and notes that the FCC's TRO specifically contemplates the consideration of financial and related information of an *efficient "model" competitor* and not that of AT&T or any other *particular competitor*.

Interrogatory 49: Based on the definitions of G&A costs in the foregoing Interrogatory, please state how you estimate G&A expenses when evaluating whether to offer a qualifying service in a particular geographic market.

Objection: AT&T incorporates its Objection to Interrogatory No. 15, *supra* and notes that the FCC's TRO specifically contemplates the consideration of financial and related information of an *efficient "model" competitor* and not that of AT&T or any other *particular*

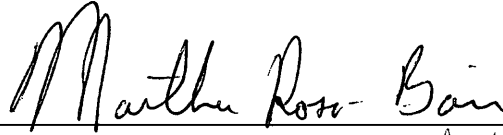
competitor.

Respectfully submitted, this the 6th day of November, 2003.

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CERTIFICATE OF SERVICE

I hereby certify that on November 6, 2003, a copy of the foregoing document was serviced on the parties of record, via US mail:

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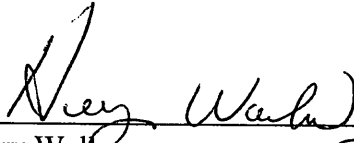
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